

1 The Honorable Ricardo S. Martinez
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 WILLIAM F. RUSSELL,
12 Plaintiff,

13 v.

14 ALAN HILBURG; individually; HILBURG &
15 ASSOCIATES, LLC; a limited liability company;
16 ALAN HILBURG & ASSOCIATES; HAI
17 HOLDINGS, INC., a corporation; PORTER
NOVELLI, INC., a corporation, d/b/a Porter
Novelli Consulting (aka PNConsulting); and
JOHN DOES and/or JANE DOES 1-3, presently
unknown parties,

18 Defendants.

19 No. C08-0217 RSM

20 DECLARATION OF DONALD J
21 HOROWITZ IN SUPPORT OF
22 PLAINTIFF'S MOTION FOR
23 SUMMARY JUDGMENT OF
24 DISMISSAL OF AFFIRMATIVE
DEFENSES

25 ORAL ARGUMENT REQUESTED
26 HEARING DATE: February 6, 2009

18 I, Donald J Horowitz, hereby state and declare:

19 That I am an attorney at law. Since 1977 I have represented the plaintiff, William F.
20 Russell, with regard to many of his legal and business affairs. This included interacting with
21 Alan Hilburg from 1998 until his services were terminated in September, 2006. This
22 declaration in support of the motion for summary judgment of dismissal of the defendants'
23 affirmative defenses is related to those issue of which I have personal knowledge.

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1 **I. The Nature of the Relationship Between William Russell, Myself, and Alan Hilburg**

2 I am the drafter of the 1998 contract between Mr. Russell and Mr. Hilburg. It is a
 3 relatively short document because the personal relationship between Mr. Russell and Mr.
 4 Hilburg long pre-dated the business relationship. The two of them were personal friends, and
 5 Mr. Russell then, and until shortly before he was terminated, trusted Mr. Hilburg personally and
 6 with his business affairs as memorialized in the 1998 contract. Because of this trust, Mr.
 7 Hilburg was authorized to negotiate for personal service contracts for Mr. Russell, was allowed
 8 to sign them on behalf of Mr. Russell, was allowed to receive all monies earned by Mr. Russell
 9 directly and in his name.

10 The reference to the exclusion of Mr. Russell's business activities in regard to Center
 11 Court Productions, Inc. in the introductory paragraph of the 1998 contract was one of the
 12 motivating factors for Mr. Russell to direct me to prepare said contract. Center Court
 13 Productions (and some related business entities) had essentially failed as businesses, leaving
 14 Mr. Russell distressed financially. He had the need to earn substantial monies to pay off debts
 15 of these failed enterprises as well as for personal living expenses. Accordingly, he agreed to
 16 allow Mr. Hilburg to market Mr. Russell's well-known and respected public persona for
 17 appearances, endorsements, and such.

18 During the first years after becoming acquainted with Mr. Hilburg, I began to and
 19 ultimately did consider myself also a friend of Mr. Hilburg, and I trusted him as a professional,
 20 as a person, and as a friend of both Mr. Russell and myself. Please see my previous
 21 "Declaration of Donald J Horowitz Regarding Porter Novelli Motion to Dismiss [docket
 22 number 21] relating to this relationship and attaching documents. Suffice it to say that I had
 23

1 several specific conversations with Mr. Hilburg in which I informed him that his status was that
2 of a fiduciary to Mr. Russell, and that his obligations and duties and standard of conduct were
3 fiduciary duties, and he directly acknowledged to me that he recognized his status and his
4 responsibility as such.

5

II. Accord and Satisfaction Affirmative Defense

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7 An example of this relates to unauthorized investments which, fairly late in the
8 relationship, Mr. Hilburg told me he had made, stating they were with Mr. Russell's funds.

9 Both before and after the contract was terminated by Mr. Russell (a process in which I
10 participated) I made increasing efforts to secure a proper accounting from Mr. Hilburg. It was
11 in the context of one of the discussions in which I demanded an accounting that he first
12 informed me that he had invested monies of Mr. Russell in two investments, Beacon Energy
13 Fund and GreenCell (neither of which I had heard of before). He raised this as a defense as to
14 why he could not remit funds at that time or fully to Mr. Russell. He said that he had invested
15 these funds of Mr. Russell's and that the GreenCell investment had limited if any cash value. I
16 told Mr. Hilburg that it was totally improper for him to have invested what he told me was Mr.
17 Russell's money without any specific authorization by Mr. Russell. I also told him that he was
18 in effect improperly acting as a securities broker, and further that the investments were totally
19 unsuitable for a person at Mr. Russell's stage of life and in his economic circumstances. I asked
20 Mr. Hilburg why he did it and his response was that he thought he could make money for Mr.
21 Russell. I told him what he had done was a clear breach of his fiduciary duties and he
22 acknowledged that it was, but he said he had thought it would have turned out making money
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DECLARATION OF DONALD J HOROWITZ IN
SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OF DISMISSAL OF
AFFIRMATIVE DEFENSES

2605.01 (P-6) No. C08-0217 RSM

Page 3 of 6

DAVID J. BALINT, PLLC
2033 SIXTH AVE., #800
SEATTLE, WA 98121-2565
Phone: (206) 728-7799
Fax: (206) 728-2729

1 for Mr. Russell, and he agreed with me when I told him he would ultimately have to make Mr.
 2 Russell whole.

3 In the context of further discussions by me with Mr. Hilburg, which happened after the
 4 contract was terminated in late 2006 and early 2007, I demanded that Mr. Hilburg promptly pay
 5 back to Mr. Russell in cash the funds that he said he had "invested." He hinted that he would
 6 like this to be a settlement, but I specifically stated and made it clear that the full accounting we
 7 had been demanding would be required before any even beginning discussions of a settlement
 8 could be started. Pending an accounting of those invested funds, as well as the full accounting
 9 Mr. Russell and I had been demanding for quite some time, Mr. Hilburg offered to relieve
 10 financial pressure on Mr. Russell, and immediately to pay \$10,000 per month by post-dated
 11 checks for ten months, and perhaps more.
 12

14 I was very careful not to make any implication that those funds were in any way a
 15 settlement of his accounts with Mr. Russell—not even the "investment" accounts, or that it was
 16 even close in amount to what a settlement would be, but that a full accounting was required.

17 I received the checks from Mr. hilburg for my William Russell trust account. I was not
 18 happy, to say the least, when the first of the checks bounced. I attach hereto a copy of the
 19 bounced check as Exhibit No. 1 along with the designations from the bank (2 pages). I attach
 20 as Exhibit 2 the remaining checks Mr. Hiburg tendered to me. These pages are numbered WFR
 21 000154-000156. I attach as Exhibit 3 some of the emails which went back and forth between
 22 me and him regarding this issue and regarding the checks. These are designated as WFR
 23 001139-001140, WFR 001144-001145, WFR 001148-001149, WFR 001152-001155, WFR
 24 001156, WFR 001158, WFR 001160, WFR 001190-001191.
 25

1 Mr. Hilburg specifically and clearly acknowledged that there was no settlement when he
 2 later began to assert to me that he did not owe Mr. Russell any money but rather, Mr. Russell
 3 owed him. In the context of that dispute, which took place after the ten checks were provided,
 4 Mr. Hilburg sent Marilyn Nault the email attached hereto as Exhibit 4 (WFR 1202), which she
 5 forwarded to me with her own pithy comment. I believe it was in May or June of 2007. In this
 6 email, he instructed us not to deposit any other of the checks after the first one bounced.
 7

8 **III. Discovery of Missing Funds/the 2006 Contract**

9 For the most part, I stayed on the sidelines after the first contract was signed by Mr.
 10 Russell and Mr. Hilburg in 1998, relying on the represented expertise, and the intelligence, skill
 11 and friendship of Mr. Hilburg to properly manage Mr. Russell's appearances etc. and his
 12 monies. When Mr. Russell later told me he was not receiving accounting documents from Mr.
 13 Hilburg despite repeated promises to produce them, I got involved. When I realized that the
 14 parties had been operating under the old technically expired agreement, I drafted a new
 15 agreement, which tightened some of the activities of Mr. Hilburg regarding the handling of
 16 funds and accountings to Mr. Russell. For example, in the future, all contracts for services of
 17 Mr. Russell had to be personally signed by him, and all payments for the services would have to
 18 go to Mr. Russell (or to my trust account) directly rather than to Mr. Hilburg. The revised
 19 contract required accountings upon demand. Mr. Hilburg agreed, and signed the contract.
 20

22 Nevertheless, I began to get the same sort of run-around that the Russells had received
 23 from Mr. Hilburg about accountings. There was one excuse after another, such as that he was
 24 involved in a divorce proceeding and the requested records were missing or destroyed by his ex-
 25

26
 DECLARATION OF DONALD J HOROWITZ IN
 SUPPORT OF PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT OF DISMISSAL OF
 AFFIRMATIVE DEFENSES

2605.01 (P-6) No. C08-0217 RSM

Page 5 of 6

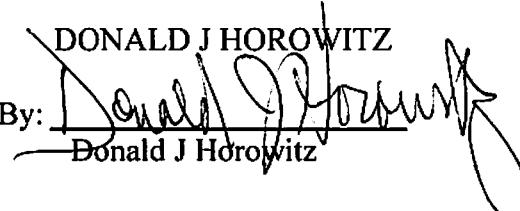
DAVID J. BALINT, PLLC
 2033 SIXTH AVE., #800
 SEATTLE, WA 98121-2565
 Phone: (206) 728-7799
 Fax: (206) 728-2729

1 wife, that there had been a fire affecting his ability to do an accounting, and other excuses as
 2 well. At no time did he refuse to give an accounting; he simply never gave it.

3 The first suspicion I had of any acts of dishonesty that I can recall was during a
 4 discussion with Richard Altman of Hollywood Collectibles. I was discussing with Mr. Altman
 5 the difficulties I was having with securing information from Mr. Hilburg, when Mr. Altman
 6 indicated that he was also having some problems and that Mr. Hilburg had tried to negotiate
 7 from him extra compensation, that was not to be reported to Mr. Russell, i.e., money that would
 8 be earned from Mr. Russell's activities and yet would not be reported to Mr. Russell and which
 9 would be in excess of the 10% commission to which Mr. Russell and Mr. Hilburg had agreed
 10 and to which the agreement limited his entitlement. Until this conversation with Mr. Altman, I
 11 had no notice or awareness of any possible dishonesty as opposed to simply being too busy or
 12 having a difficult personal life, or having other excuses for not producing accountings.

15 I hereby declare under penalty of perjury under the laws of the State of Washington that
 16 the above is true to the best of my knowledge and belief.

18 Dated this 8th day of January, 2009 at Seattle, Washington.

20
 21 By: 
 22 Donald J. Horowitz
 23
 24
 25
 26

DECLARATION OF DONALD J HOROWITZ IN
 SUPPORT OF PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT OF DISMISSAL OF
 AFFIRMATIVE DEFENSES

2605.01 (P-6) No. C08-0217 RSM

Page 6 of 6

DAVID J. BALINT, PLLC
 2033 SIXTH AVE., #800
 SEATTLE, WA 98121-2565
 Phone: (206) 728-7799
 Fax: (206) 728-2729

RI v6
Washington Mutual
Notice of Re-

Notice of Returned Deposited Check

02-27-07

IMPORTANT ACCOUNT INFORMATION

We want to let you know that a check deposited in, or cashed against, your account was returned unpaid. The check amount, along with a Returned Deposited Item Fee, was withdrawn from your account on the date listed above. If you have any questions, please call us at 1-800-788-7000.

Reason for return: NON SUFFICIENT FUNDS

WILLIAM F. RUSSELL
WILLIAM F. RUSSELL BUSINESS ACCOUNT

MERCER ISLAND WA 98040-1311

00049
FD02001 000835328656

122000166
02/27/2007
b522397305

HAI HOLDINGS, INC.
ALEXANDRIA VA 22314
874325
READS

4081
88-54514
MAY 1988

1230002203 02/22/2007
003435389713

P.O. BOX 1144
NORTHRIDGE, CA 91328-1144

WILLIAM F RUSSELL
WILLIAM F RUSSELL BUSINESS ACCOUNT

43684

MERCER ISLAND WA 98040-1311

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

This Statement Covers

From: 02/23/07

Through: 03/21/07

Need assistance?

To reach us anytime,

call 1-800-788-7000

or visit us at wamu.com

Just like your primary mortgage, interest on a home equity line of credit may be tax-deductible (consult a tax advisor).
Call 1.866.467.8562 today to find out more!

Your Platinum Checking Detail Information

WILLIAM F RUSSELL
WILLIAM F RUSSELL BUSINESS ACCOUNT

Account Number: 240578-5
Washington Mutual Bank, FA

Effective 4/21/07, Platinum Relationship Bonus Program will not be offered for existing accounts not already enrolled, or for new accounts.

Your Account at a Glance

Beginning Balance	\$130,456.59	Interest Earned	\$349.91
Checks Paid	\$0.00	Annual Percentage Yield Earned	3.75%
Other Withdrawals	-\$10,015.00	YTD Interest Paid	\$1,074.55
Deposits	+\$25,358.91	YTD Interest Withheld	\$0.00
Ending Balance	\$129,800.50		

Platinum Relationship

Average Balance **\$118,095.88**

(the prior calendar month's average combined daily ending balance of the Platinum Checking and all linked deposit accounts + the prior calendar month's end of month balance of any other linked account)

End of Month Balance **\$129,092.81**
(Platinum Checking and all linked accounts -- prior calendar month's end of month balance)

Date	Description	Withdrawals (-)	Deposits (+)
02/27	Returned Deposited Item	\$10,000.00	
02/27	Returned Deposited Item Fee	\$6.00	
03/14	Customer Deposit		\$25,000.00
03/21	Interest Payment		\$349.91
03/21	Not Qualified For Rel Bonus On Plat Svgs		
03/21	Service Charge	\$9.00	
03/21	Refund Service Charge		\$9.00



HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

4082

68-54/514
BRANCH 00164

3/11/07

DATE

PAY TO THE
ORDER OFWm Russell Trust \$ 10,000
Ten Thousand and 00/100

DOLLARS

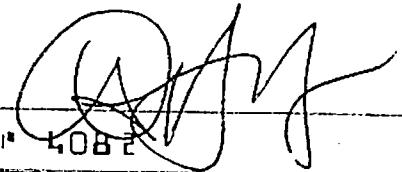
Security
Features
Detector

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

FOR

0303 4082



HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

4083

68-54/514
BRANCH 00164

4/11/07

DATE

PAY TO THE
ORDER OFWm Russell Trust \$ 10,000
Ten Thousand and 00/100

DOLLARS

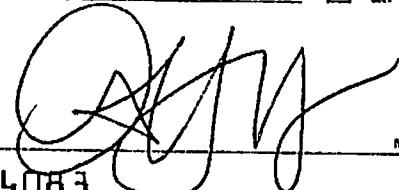
Security
Features
Detector

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

FOR

0303 4083



HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

4084

68-54/514
BRANCH 00164

5/11/07

DATE

PAY TO THE
ORDER OFWm Russell Trust \$ 10,000
Ten Thousand and 00/100

DOLLARS

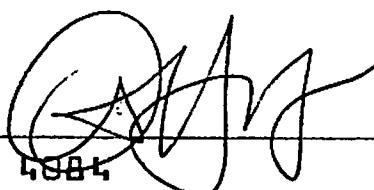
Security
Features
Detector

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

FOR

0303 4084



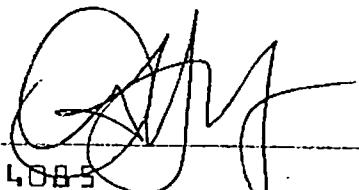
HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

4085

68-54/514
BRANCH 00164

6/11/07

DATE

PAY TO THE
ORDER OFWm Russell Trust \$ 10,000
Ten Thousand and ⁰⁰ DOLLARS 

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

FOR

030311 4085

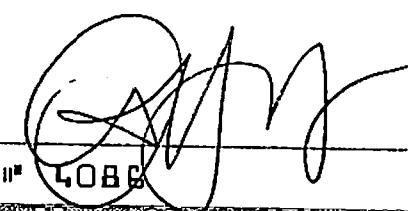
CHARLADY/LIBERTY

4086

68-54/514
BRANCH 00164

7/11/07

DATE

PAY TO THE
ORDER OFWm Russell Trust \$ 10,000
Ten Thousand and ⁰⁰ DOLLARS 

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

FOR

030311 4086

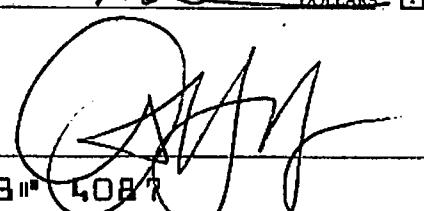
CHARLADY/LIBERTY

4087

68-54/514
BRANCH 00164

8/11/07

DATE

PAY TO THE
ORDER OFWm Russell Trust \$ 10,000
Ten Thousand and ⁰⁰ DOLLARS 

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

FOR

030311 4087

CHARLADY/LIBERTY

4088
68-54/514
BRANCH 00164

HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

9/15/07 DATE

PAY TO THE ORDER OF Wm Russell Trust **\$ 10,000**
Ten Thousand and 00/100 DOLLARS 

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR _____

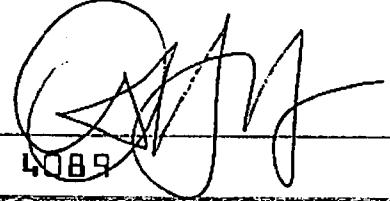
030311 4088

SHARNDY LIBERTY

4089
68-54/514
BRANCH 00164

HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

10/17/07 DATE

PAY TO THE ORDER OF Wm Russell Trust **\$ 10,000**
Ten Thousand and 00/100 DOLLARS 

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR _____

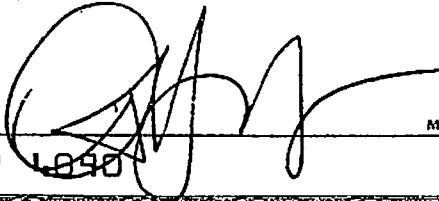
030311 4089

SHARNDY LIBERTY

4090
68-54/514
BRANCH 00164

HAI HOLDINGS, INC.
ALEXANDRIA, VA 22314

11/15/07 DATE

PAY TO THE ORDER OF Wm Russell Trust **\$ 10,000**
Ten Thousand and 00/100 DOLLARS 

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR _____

030311 4090

SHARNDY LIBERTY

X-Gmail-Received: a7c9aa1ad7271cce0cf3974b9b3e7335e608b4cc

Delivered-To: don.horowitz@gmail.com

Importance: Normal

Subject: Re: Material on assets you have for WFR -- and payment proposal

From: Alan.Hilburg@pnconsult.com

To: "Donald Horowitz" <don.horowitz@gmail.com>

Date: Sat, 11 Nov 2006 11:28:20 -0500

X-Mailer: Lotus Domino Web Server Release 6.5.5 November 30, 2005

X-MIMETrack: Serialize by Notes Server on bosmail1/PorterNovelli(Release 6.5.5|November 30, 2005) at 11/11/2006 11:28:20 AM,

 Serialize complete at 11/11/2006 11:28:20 AM,

 Itemize by Notes Server on bosmail1/PorterNovelli(Release 6.5.5|November 30, 2005) at 11/11/2006 11:28:20 AM,

 Serialize by Router on BOSCPSTMTP2/PorterNovelli(Release 6.5.5|November 30, 2005) at 11/11/2006 11:28:25 AM,

 Serialize complete at 11/11/2006 11:28:25 AM

Good morning Don.

Here is the accounting and proposals.

To date \$186,890 sent to the Key Bank account.

The closing capital account balance of the Beacon Energy Fund is currently \$103,674. This as I said has always been titled in my name because that was the only way at the time to get into the fund.

The value of the 300,000 shares of GreenCel is undeterminable. We know how much we put in it but until the shares are potentially sold, there isn't a final value. The good news is that they have submitted a slew of patents for their scientific work and there is a great deal of optimism about the outcome here. I've been in touch with the USPTO and there are no conflicting patents. I'm working with the principals of the company on their marketing plans and have made some initial approaches to Merck, Pfizer and a few other contacts I have to set up exploratory meetings on their interest in purchasing all or part of GreenCel. My own financial planning anticipated these shares being worth \$4.00 a piece by 2008.

My proposal is that beginning in January I will send the Russells at least \$10,000 per month on or before the 15th. If more is available I will send that also. The energy investments have not been as strong as originally promised but I have confidence in the GreenCel investment.

I'll call you Monday to discuss.

Warmest regards,

Alan

Alan Hilburg

President/CEO

PNConsulting

alan.hilburg@pnconsult.com

703.684.7764

703.684.7762 fax

703.615.3621 cell

-----"Donald Horowitz" <don.horowitz@gmail.com> wrote: -----

To: alan.hilburg@pnconsult.com

From: "Donald Horowitz" <don.horowitz@gmail.com>

Date: 11/09/2006 03:11AM

Exhibit 3, Page 12

file:///C:/DOCUMENTS~1/DJH/LOCALS~1/Temp/eud5D.htm

WFR001139

Subject: Material on assets you have for WFR -- and payment proposal

Dear Alan,

Yesterday (Tuesday) you promised that by last night I'd have from you the listing and other material and information you have on assets that you have invested and/or are holding for William Russell, as well as a proposed payment plan by you to William.

I still don't have it. Please!

Don

=

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Exhibit 3, Page 13

file:///C:/DOCUMENTS~1/DJH/LOCALS~1/Temp/eud5D.htm

WFR001140

Alan.Hilburg@pnconsult.com, 11:19 AM 11/20/2006, Re: Material on assets you have for WFR -- and paym

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Re: Material on assets you have for WFR -- and payment proposal
Cc: Alan.Hilburg@pnconsult.com, don.horowitz@gmail.com
Bcc: horowitz13
Attached:

Alan,

The attached doesn't really explain very much without more. For example, it doesn't tell how much came from the invested assets and how much came from earnings during that period, and what the earnings were, and what invested assets it came from. Nothing else has come since.

I can't emphasize enough that you must get us sensible, understandable facts, the specific information I've requested, what you think you still owe, and a proposed plan. And it can't wait any longer. Get some professional help if you need to.

I can't emphasize enough that you must do this, thoroughly, properly, and soon.

Don

At 12:26 PM 11/11/2006, Alan.Hilburg@pnconsult.com wrote:
Hiawatha, the attached should be a big help.

Other info later today.

Regards,
Alan
Alan Hilburg
President/CEO
PNConsulting
alan.hilburg@pnconsult.com
703.684.7764
703.684.7762 fax
703.615.3621 cell

-----Donald Horowitz <don.horowitz@gmail.com> wrote: -----

To: Alan.Hilburg@pnconsult.com
From: Donald.Horowitz <don.horowitz@gmail.com>
Date: 11/11/2006 01:25PM
cc: don.horowitz@gmail.com
Subject: Re: Material on assets you have for WFR -- and payment proposal

Hi Alan,

Alan.Hilburg@pnconsult.com, 11:19 AM 11/20/2006, Re: Material on assets you have for WFR -- and paym

Thanks for this.

I need a breakdown of the \$186,890 that you sent to the KeyBank account by date and amount. Please explain the odd number.

I need the account titles, account numbers, names and addresses of the brokers, holders, etc. What I mean by this is who is holding the assets, etc.

A copy of a recent account statement would be very good. Please fax it to me at 206-328-7566.

I also need to know what was initially put into each account and when that was.

The above should take you no time to get to me, and then we can talk.

Thanks.

Don

At 08:28 AM 11/11/2006, Alan.Hilburg@pnconsult.com wrote:
Good morning Don.

Here is the accounting and proposals.

To date \$186,890 sent to the Key Bank account.

~~The closing capital account balance of the Beacon Energy Fund is currently \$103,674. This as I said has always been titled in my name because that was the only way at the time to get into the fund.~~

The value of the 300,000 shares of GreenCel is undeterminable. We know how much we put in it but until the shares are potentially sold, there isn't a final value. The good news is that they have submitted a slew of patents for their scientific work and there is a great deal of optimism about the outcome here. I've been in touch with the USPTO and there are no conflicting patents. I'm working with the principals of the company on their marketing plans and have made some initial approaches to Merck, Pfizer and a few other contacts I have to set up exploratory meetings on their interest in purchasing all or part of GreenCel. My own financial planning anticipated these shares being worth \$4.00 a piece by 2008.

My proposal is that beginning in January I will send the Russells at least \$10,000 per month on or before the 15th. If more is available I will send that also. The energy investments have not been as strong as originally promised but I have confidence in the GreenCel investment.

I'll call you Monday to discuss.

Warmest regards,
Alan

Alan Hilburg, 07:09 PM 1/10/2007, Our telephone conversation of today

To: Alan Hilburg
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Our telephone conversation of today
Cc:
Bcc: Don at Gmail, Don at Hotmail
Attached:

Dear Alan,

I hope you are safely at home.

I also hope our conversation was helpful, and I very much look forward to seeing you soon, hopefully in the next few weeks. Please let me know what the possibilities are.

Relative to William, please do get the \$10,000 per month payments started ASAP. They should be wired to the same account as you've most recently wired money to, and I would suggest that you give your bank instructions to send it on the same date each month for January through November beginning with January 12. Do let me know what you do, so I can plan on it and watch for it.

I look forward to hearing from you.

Best,

Don

Alan.Hilburg@pnconsult.com, 07:28 PM 1/12/2007, Re: Our telephone conversation of today

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Re: Our telephone conversation of today
Cc:
Bcc: Don at Gmail, Don at Hotmail
Attached:

Alan,

We're clicking. January 30 is a very good day, January 25 is almost as good. The other day doesn't work. Relative to the 30th, you can come in the night before and I'm free, plus the 30th, or you can come in on the 30th and stay over to the 31.

On the \$10,000 per month to WFR, no problem doing it on the 15th regularly. Please let me know when the first transfer has actually gone out next Monday or Tuesday.

Relative to the two card deals, I will talk to William this weekend on them, and get back to you. I appreciate the effort. I'll also find out if he will be in town the end of the month, and if, to use your expression, he'd be interested in spending some time.

Please let me know as soon as you can about the date you're coming out so I can block it off. I'm very much looking forward to a good visit.

Have a great weekend.

Don

At 04:12 PM 1/12/2007, you wrote:
Hiawatha, pls see my comments below.

Warmest regards,
Alan
Alan Hilburg
President/CEO
PNConsulting
alan.hilburg@pnconsult.com
703.684.7764
703.684.7762 fax
703.615.3621 cell



-----Donald Horowitz <don.horowitz@gmail.com> wrote: -----

To: alan.hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Date: 01/10/2007 10:09PM
Subject: Our telephone conversation of today

Delivered-To: don.horowitz@gmail.com
Subject: Re: Our telephone conversation of today
From: Alan.Hilburg@pnconsult.com
To: Donald Horowitz <don.horowitz@gmail.com>
Date: Sun, 14 Jan 2007 21:46:33 -0500
X-Mailer: Lotus Domino Web Server Release 6.5.5 November 30, 2005
X-MIMETrack: Serialize by Notes Server on bosmail1/PorterNovelli(Release 6.5.5|November 30, 2005) at 01/14/2007 09:46:33 PM,
 Serialize complete at 01/14/2007 09:46:33 PM,
 Itemize by Notes Server on bosmail1/PorterNovelli(Release 6.5.5|November 30, 2005) at 01/14/2007 09:46:33 PM,
 Serialize by Router on BOSCPSMTP2/PorterNovelli(Release 6.5.5|November 30, 2005) at 01/14/2007 09:46:40 PM,
 Serialize complete at 01/14/2007 09:46:40 PM

ii. Looks like come in the evening of Tuesday 1/29. Will leave the 30th in afternoon. *OK*

Any feedback from WFR on the two card opportunities?

ounds like you got a little intimidated by the 5' 9" position. Might mean you need a little more practice!

est
ian
ian Hilburg
resident/CEO
NConsulting
ian.hilburg@pnconsult.com
03.684.7764
03.684.7762 fax
03.615.3621 cell

Call AH

Call WFR

WFR/b

---Donald Horowitz <don.horowitz@gmail.com> wrote: -----

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Date: 01/14/2007 08:55PM
Subject: Re: Our telephone conversation of today

That's longer than either of us are high. You must have a drain in your bathroom floor.

When are you coming? Have you seen the dates I sent you?

on

At 03:19 PM 1/13/2007, you wrote:
Today stood 5'9 1/2 inches away from urinal...how are you doing?

Alan Hilburg

alan.hilburg@pnconsult.com
03.684.7764
03.684.7762 fax
03.615.3621 cell

Exhibit 3, Page 18

WFR001152

Alan.Hilburg@pnconsult.com, 08:59 AM 1/23/2007, Re: Crisis Du Jour

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Re: Crisis Du Jour
Cc:
Bcc: Don at Gmail, Don at Hotmail
Attached:

Wow! I don't know what else to say.

I'm sorry to say this, but with all of this, it would be most helpful for you to wire the \$10,000 to Bill's account today if possible. I represented the dates you told me previously, and had no reason to tell Bill why it didn't show up. Given the status of things, that would be a big help, and further delays will not help at all. PLEASE LET ME KNOW WHEN THIS IS DONE.

Also, when you can, please let me know your arrival flight and time next week so I can pick you up.

I am not unsympathetic; I just don't know how to react to this latest event. You must feel violated. We can talk more about it when you're here.

Don

At 07:11 AM 1/23/2007, you wrote:

Hello Don. Did get your message but have been embroiled in the craziest situation you can imagine. On Thursday learned that my assistant had stolen three check books of mine, writing 73 checks exceeding \$70,000. Been dealing with the bank, police, attorneys, etc. Will try and call tonight or tomorrow at the very, very latest.

Looking forward to entering the sanity of Seattle next week to be with you.

Alan
alan.hilburg@pnconsult.com
703.684.7764
703.684.7762 fax
703.615.3621 cell
=

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Alan Hilburg, 03:31 PM 2/1/2007, Packet of Checks for WFR

To: Alan Hilburg
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Packet of Checks for WFR
Cc:
Bcc: Don at Gmail, Don at Hotmail
Attached:

Dear Alan,

Sometimes I am totally bewildered by you. You promise again and again to do something and it doesn't get done. Not only doesn't it get done but I'm not given a heads-up that it will be delayed or won't get done.

What am I supposed to think? How am I supposed to rely on you, or to trust what you say - for or about anything?

In the meantime I waste my time looking for what you said you were sending by express mail, having our office receptionist check, etc. And what about what Bill thinks after I've told him time and again that the check is in the mail. It not only impairs your credibility; it impairs mine.

Please don't call me with an explanation. Just do what you've promised. Then we can go on from there.

Don

Alan Hilburg, 08:40 PM 2/5/2007, WFR

To: Alan Hilburg
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: WFR
Cc:
Bcc: don.horowitz@gmail.com, horowitz13@hotmail.com
Attached:

Dear Alan,

I finally got the checks, first one payable February 15. Thank you.

One other question. Will you be providing a 1099 for William for 2006? If so, when.
Thanks,

Don

ted for Donald Horowitz <don.horowitz@gmail.com>

Exhibit 3, page 21

WFR001156

Alan.Hilburg@pnconsult.com, 09:42 AM 2/8/2007, Re: WFR

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Re: WFR
Cc:
Bcc: don.horowitz@gmail.com, horowitz13@hotmail.com
Attached: C:\Documents and Settings\DJH\My Documents\William F Russell\Contract - WFR and Dutton Publishing re Russell Rules 8-10-2000.pdf;

No. Same ID Number.

Also, I need to ask you a quick question about the "literary agent" that was mentioned in the contract with Dutton for the "Russell Rules" book. They were called "The Literary Group International", and apparently got a 15% commission under Section 27. Can you tell me very briefly who they were, what they did, and who and how to get hold of the person there who was dealt with. They seem to have some rights co-extensive with the Dutton option for a next book. For your convenience, I've attached a copy of the contract.

You can give me a call if you want, rather than an e-mail but that's up to you. I'd like to get this information fairly quickly.

I very much hope things are going better for you. If you'd like to talk at greater length on more personal subjects, I'll be available tonight. from 6PM my time on.

Warm good wishes,

Don (Hiawatha)

At 09:03 AM 2/8/2007, you wrote:

Quick question...is there a separate tax id number for the trust that the money is sent to vs. WFR?

Alan Hilburg
President/CEO
PN Consulting
alan.hilburg@pnconsult.com
703.684.7764
703.684.7762 fax
703.615.3621 cell
=

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inted for Donald Horowitz <don.horowitz@gmail.com>

Exhibit 3, Page 22

WFR001158

Alan.Hilburg@pnconsult.com, 09:15 PM 2/9/2007, Re: WFR

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Subject: Re: WFR
Cc: don.horowitz@gmail.com
Bcc: horowitz13
Attached:

Thanks for this, Alan. Let's talk on Monday if you can.

What about the 1099?

Thanks,

Don

At 04:33 PM 2/9/2007, Alan.Hilburg@pnconsult.com wrote:
Hiawatha, pls see below...

Regards,
Alan

alan.hilburg@pnconsult.com
703.684.7764
703.684.7762 fax
703.615.3621 cell

Donald Horowitz <don.horowitz@gmail.com> wrote: -----

To: Alan.Hilburg@pnconsult.com
From: Donald Horowitz <don.horowitz@gmail.com>
Date: 02/08/2007 12:42PM
Subject: Re: WFR

No. Same ID Number.

Also, I need to ask you a quick question about the "literary agent" that was mentioned in the contract with Dutton for the "Russell Rules" book. They were called 'The Literary Group International', and apparently got a 15% commission under Section 27. Can you tell me very briefly who they were THEY WERE THE LITERARY AGENTS WE HIRED TO PITCH THE BOOK CONCEPT TO POTENTIAL PUBLISHERS, what they did THEY CIRCULATED THE IDEA AND ULTIMATELY LED US TO PENGUIN PUTNAM, and who and how to get hold of the person there who was dealt with FRANK WEIMANN AND I'LL GET YOU HIS NUMBER EARLY NEXT WEEK WHEN I RETURN HOME. They seem to have some rights co-extensive with the Dutton option for a next book. DONT KNOW ABOUT THE LITERARY AGENT'S INVOLVEMENT BUT I DO KNOW THAT PENGUIN PUTNAM HAS THE RIGHT OF FIRST REFUSAL. IS THERE A BOOK PROJECT IN PLAY? For your convenience, I've attached a copy of the contract.

1ited for Donald Horowitz <don.horowitz@gmail.com>

Exhibit 3, Page 23

WFR001160

Alan.Hilburg@pncconsult.com, 10:59 PM 3/4/2007, Re: Fw:

To: Alan.Hilburg@pncconsult.com
 From: Donald Horowitz <don.horowitz@gmail.com>
 Subject: Re: Fw:
 Cc:
 Bcc: w.russell@comcast.net, mzmarilyn@comcast.net, don.horowitz@gmail.com, horowitz13
 Attached:

Dear Alan,

Thank you for confirming the fact that your accountant has approved the fact that it is proper for your company not to issue a Form 1099 to William Russell for the year 2006.

I must say I was surprised by his tone, because the fact is this should never have been an issue. You know, if he doesn't, that your company collected William's money as his representative only and in no other capacity, and, other than your fees, that money never belonged to your company or you. Further, neither William nor Marilyn nor I found out until last year when we once again sought an accounting from you, that you had not held the money separately in trust for William but had instead put William's money into the name of your company, and paid federal income taxes on it. Also, without authorization or notice to or knowledge of William, you invested William's money in your name or the name of your company in certain investments the nature of which we still don't understand, or about which we have no meaningful information, and that you tell us you can't get out of or liquidate without serious penalty. Under those circumstances, and the fact that after a great many requests, at last in 2006 you reimbursed William some of his money that you or your company had, and that your company had improperly kept and paid taxes on, it is very clear to me and others I've consulted with, that there is no basis for your company or you to issue a 1099 for 2006 to William in any amount for your reimbursement of this money which was always his, and upon which you previously paid taxes. The only reasonable interpretation would have to be that, whether your bookkeeper or accountant likes it or not, the federal taxes were in fact paid by you or your company on William's behalf, and he can't be taxed on it again. The law calls this a constructive trust, and your company would never have had the income nor the deduction if this had been handled properly in the first instance.

That's part one. Part two is that I have twice told you recently and repeated it (and many times before) that nothing can or will be closed until, as was and is your duty, William receives full and specific information on the money of his that you collected, when you collected it, who it was from and what it was for, what deductions you took for fees and expenses, what taxes you actually paid on each and any of those sums, for what year and in what year, and in what amount, what and how you computed the amount, after those deductions, you believed was net to William, what those amounts were, and what you did with such funds after that. Only after we receive that can we, or you, have any even beginning idea of what is owed to whom.

So how you can possibly say that William owes you \$21,620.18 confounds my imagination, and how you can say that you believe we can now close the books when we haven't had access to or know what is in the books is mind boggling. Further, it does not engender trust when the \$10,000 check dated February 15, 2007 you sent as the first of ten monthly installments of a \$100,000 payment to William was returned by the bank a few days ago with the notation that there were insufficient funds in your or your company's

Alan.Hilburg@pnconsult.com, 10:59 PM 3/4/2007, Re: Fw:

account that it was drawn on.

There's more that can be said. But I won't right now. The simple fact is that William is entitled to and has been asking for a full accounting from you (as was required not only because you were a fiduciary, but also by the written contract between you and William) for a few years now, but hasn't even gotten close to meaningful information. At this point, it's very clear that you must provide it, and very soon, and it must be professionally prepared by a qualified accountant who knows and understands what a full accounting is, and complies with that definition.

I'm finished. I'm not talking about this with you any more. I've wasted hundred of hours of my time in unnecessary back and forth, repetition, and more. You simply don't hear me or don't want to hear me, or won't do what you know you should do because you don't want to do it -- for whatever reason you may have, and that I'm no longer going to try to search out or understand.

I don't want to hear or see any promises; I just want to see the product -- a complete and proper one -- that William is legally, contractually and ethically entitled to, and that you have a legal, contractual and ethical duty to provide. And it had better be in my office mail when I return from this trip.

By the way, it also wouldn't be bad idea to make good on your bounced February 15 check with a certified check in that amount sent to William's post office box.

Don

At 04:28 AM 3/4/2007, you wrote:

Don, confirming your email. I believe we need a document 'closing the books' so that this would include having the checks the Russells have returned to me and we need to find a way to reconcile the balance of \$21,610.18. Do you agree?

Best
 Alan
alan.hilburg@pnconsult.com
 703.684.7764
 703.684.7762 fax
 703.615.3621 cell

-----Forwarded by Alan Hilburg/PNConsult/PorterNovelli on 03/04/2007 07:20AM -----

To: <alan.hilburg@pnconsult.com>
 From: "Hudimac, Tony" <tony.hudimac@yhbcpa.com>
 Date: 03/03/2007 05:21PM
 Subject: 1099

Alan;

This is to confirm our conversation. You understand that you are giving up a \$273,890 deduction for HAI as a result of this decision. The tax implications for you are substantial. I've calculated using a conservative basis of 35% federally and 5.75 % state tax that this amounts to \$111,610.18.

3-15-2007

Begin forwarded message:

I cant believe this crock of baloney coated in sugar.

Good morning Marilyn. I hope this email finds you and William doing well.

In that it is the 15th I wanted to confirm that as per Don and my discussion re: the 1099 resolution that you will not be cashing any of the checks that were written before we came to the tax accomodation.

As I indicated in my last email, I am hopeful that we can rediscover our deep, cordial rythmn in the near future.

Warmest regards,

Alan

alan.hilburg@pnconsult.com

703.684.7764

703.684.7762 fax

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Exhibit 4, page 26

WFR001202